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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,690	11/16/1999	FRANK HAGEBARTH	Q056494	3299

7590 02/12/2002

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EXAMINER
FERNSTROM, KURT

ART UNIT	PAPER NUMBER
3712	

DATE MAILED: 02/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/440,690	Applicant(s) FRANK HAGEBARTH	
	Examiner Kurt Fernstrom	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11-20 and 22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *15-20* is/are allowed.

6)☒ Claim(s) *1-9,11-14 and 22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on *30 November 2001* is: a)☒ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-9, 11-14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Shimizu. The claims are directed towards a method and apparatus for creating and monitoring a progress plan for a training course. Peterson discloses in column 3. Line 10 to column 16, line 64 of the specification an apparatus and method of training a student comprising a computer network which creates a schedule for the user to perform the training and monitors the progress. In particular, column 12, lines 8-38 describe the use of schedule reports, which monitor the time and duration of training sessions by the user and compare the schedule with a prescribed schedule to ensure that the user is maintaining the prescribed schedule. The user is notified if he or she is not maintaining the prescribed schedule. Peterson further discloses in column 3, lines 35-36 that the computer network may comprise the Internet, and in column 15, lines 22-67 that the computer network may comprise an Intranet. Peterson fails to disclose that the method comprises defining first time units defining the time periods a trainee would like to spend on a course. Shimizu discloses in column 4, lines 2-47 of the specification a method of

creating a progress plan for a training program whereby the trainee can specify convenient dates and times to attend lectures, receive a list of available lectures in response, and select a preferred schedule from the list. It would have been obvious to one of ordinary skill in the relevant art to modify the method and apparatus disclosed by Peterson by providing means for defining time units representing time periods which the student would like to spend training for the purpose of allowing the student to select a preferred training schedule. While neither Peterson nor Shimizu explicitly discloses the use of electronic mail to provide information to the student, electronic mail is an extremely well known means of transmitting information over a computer network, and would have been obvious to one of ordinary skill in the relevant art for the purpose of directly notifying a student of any pertinent information regarding the progress plan. Also, while Peterson and Shimzu both fail to explicity disclose that the program is stored on a CD or floppy disk, these are extremely well known means of storing programs and would have been obvious for the purpose of allowing the user to install the program on a computer.

Allowable Subject Matter

3. Claims 15-20 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose or suggest a means for creating a progress plan for the execution of the training course dependent upon the fistand second time units, and a means for monitoring the completion of the training unit as defined by applicant.

Response to Arguments

5. Applicant's arguments filed on November 30, 2001 have been fully considered but they are not persuasive. The argument that the prior art does not disclose certain steps being taken "by the computer", rather than an instructor, is unpersuasive for two reasons. First, both the prescribed schedule of Peterson and the list of available lectures disclosed by Shimzu comprise second time units required to execute training units of the training course. Because both schedules are contained within computer programs, the computer has defined first training units in each case. While these second time units may not be the same type of time units contemplated by applicant, the prior art reads on the claim as written. Secondly, the phrase "by the computer" is a broad phrase that could mean a number of things, including "via the computer." Even if the instructor is the one responsible for the creative element in performing various steps, if he or she is performing these steps with the use of a computer, that also reads on claim 1 as written.

With respect to the step pertaining to creation of a progress plan, that step is disclosed by Peterson, not, Shimzu. The schedule and summary reports generated by the method of Peterson, disclosed in col. 12, lines 12-38, comprise a progress plan which monitors the progress of the student. Because any training course will have an ending, the specification of the end f the schedule is inherent in the disclosure of Peterson. Again, even though the type of progress plan contemplated by applicant may not be precisely the same as that disclosed by the prior art, the prior art does read on the claims as written.

In response to applicant's argument that there is no suggestion to combine the references,

the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 19880; *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Shimzu is being cited only for its disclosure of first time units representing the time periods which a trainee specifies, which is identical to the problem addressed in that specific step of the claim; that is, allowing the student to specify time units. Further, both Peterson and Shimzu are in the field of the present invention, that being the field of on-line teaching systems. It would have been obvious to combine Peterson with Shimzu for the purpose of allowing the student to specify times. The motivation for this modifiation, allowing the student to create his or her own schedule, does not arise only from the claimed invention, but is disclosed in Shimzu, as for example in column 1, lines 13-45.

Because claims 15-20 recite the limitations in the form of "means plus function" language, and because the prior art does not disclose an apparatus which performs the same tasks in substantially the same way as the claimed invention, as required under 35 USC 112, p. 6, the arguments made by applicant are persuasive with respect to those claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303.

KF

February 7, 2002

Kien T. Nguyen
Primary Examiner

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, MUST be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings MUST be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in ABANDONMENT of the application.